

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 365

Introduced by Assembly Member Mullin

February 14, 2013

An act to amend ~~Sections~~ *Section 273 of*, and ~~2025.510 of~~ *to add Section 275 to*, the Code of Civil Procedure, and to amend ~~Section 69957 of the Government Code~~, relating to court reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 365, as amended, Mullin. Court reporting.

Existing law provides that the report of the official court reporter or official court reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceeding.

~~This bill would require that the report be transcribed and certified by a certified shorthand reporter, as defined, in order to qualify as prima facie evidence of that testimony and proceeding.~~

The bill would make clarifying changes to those provisions.

~~Existing law requires that, unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. If testimony at the deposition is recorded both stenographically, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.~~

~~This bill would clarify that the testimony recorded stenographically at the deposition is recorded by a certified shorthand reporter, as defined.~~

~~Existing law authorizes a court to order the use of electronic recording of an action or proceeding where an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court in a limited civil case, a misdemeanor case, or an infraction case, as prescribed. A transcript derived from an electronic recording is authorized to be utilized whenever a transcript of court proceedings is required.~~

~~This bill would require that the electronic recording be transcribed by a certified shorthand reporter, as defined, in order to be utilized whenever a transcript of court proceedings is required.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 273 of the Code of Civil Procedure, as
2 amended by Section 1 of Chapter 87 of the Statutes of 2009, is
3 amended to read:

4 273. (a) ~~The~~ *Notwithstanding any other provision of law, the*
5 report of the official reporter, or official reporter pro tempore, of
6 any court, duly appointed and sworn, when transcribed and certified
7 ~~by a certified shorthand reporter, as being a correct transcript of~~
8 the testimony and proceedings in the case, is prima facie evidence
9 of that testimony and proceedings.

10 (b) The report of the official reporter, or official reporter pro
11 tempore, of any court, duly appointed and sworn, when prepared
12 as a rough draft transcript, shall not be certified and cannot be
13 used, cited, distributed, or transcribed as the official certified
14 transcript of the proceedings. A rough draft transcript shall not be
15 cited or used in any way or at any time to rebut or contradict the
16 official certified transcript of the proceedings as provided by the
17 official reporter or official reporter pro tempore. The production
18 of a rough draft transcript shall not be required.

19 (c) The instant visual display of the testimony or proceedings,
20 or both, shall not be certified and cannot be used, cited, distributed,
21 or transcribed as the official certified transcript of the proceedings.
22 The instant visual display of the testimony or proceedings, or both,
23 shall not be cited or used in any way or at any time to rebut or
24 contradict the official certified transcript of the proceedings as
25 provided by the official reporter or official reporter pro tempore.

1 ~~(d) For purposes of this section, “certified shorthand reporter”~~
2 ~~has the same meaning as Section 8018 of the Business and~~
3 ~~Professions Code.~~

4 ~~(e)~~

5 (d) This section shall remain in effect only until January 1, 2017,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2017, deletes or extends that date.

8 SEC. 2. Section 273 of the Code of Civil Procedure, as added
9 by Section 2 of Chapter 87 of the Statutes of 2009, is amended to
10 read:

11 273. (a) ~~The~~ *Notwithstanding any other provision of law, the*
12 *report of the official reporter, or official reporter pro tempore, of*
13 *any court, duly appointed and sworn, when transcribed and certified*
14 ~~by a certified shorthand reporter,~~ *as being a correct transcript of*
15 *the testimony and proceedings in the case, is prima facie evidence*
16 *of that testimony and proceedings.*

17 (b) The report of the official reporter, or official reporter pro
18 tempore, of any court, duly appointed and sworn, when prepared
19 as a rough draft transcript, shall not be certified and cannot be
20 used, cited, distributed, or transcribed as the official certified
21 transcript of the proceedings. A rough draft transcript shall not be
22 cited or used in any way or at any time to rebut or contradict the
23 official certified transcript of the proceedings as provided by the
24 official reporter or official reporter pro tempore. The production
25 of a rough draft transcript shall not be required.

26 ~~(e) For purposes of this section, “certified shorthand reporter”~~
27 ~~has the same meaning as Section 8018 of the Business and~~
28 ~~Professions Code.~~

29 ~~(d)~~

30 (c) This section shall become operative on January 1, 2017.

31 SEC. 3. *Section 275 is added to the Code of Civil Procedure,*
32 *to read:*

33 275. *For the purposes of this chapter, an official reporter or*
34 *an official reporter pro tempore shall be appointed as provided*
35 *by Section 69942 of the Government Code.*

36 ~~SEC. 3. Section 2025.510 of the Code of Civil Procedure is~~
37 ~~amended to read:~~

38 2025.510. ~~(a) Unless the parties agree otherwise, the testimony~~
39 ~~at any deposition recorded by stenographic means shall be~~
40 ~~transcribed.~~

~~(b) The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party.~~

~~(c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the deponent, at the expense of that party or deponent, may obtain a copy of the transcript.~~

~~(d) If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time.~~

~~(e) Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified.~~

~~(f) At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio or video technology shall promptly do both of the following:~~

~~(1) Permit that other party to hear the audio recording or to view the video recording.~~

~~(2) Furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.~~

~~(g) If the testimony at the deposition is recorded both stenographically by a certified shorthand reporter, and by audio or video technology, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.~~

~~(h) (1) The requesting attorney or party appearing in propria persona shall timely pay the deposition officer or the entity providing the services of the deposition officer for the transcription~~

1 or copy of the transcription described in subdivision (b) or (c), and
2 any other deposition products or services that are requested either
3 orally or in writing.

4 ~~(2) This subdivision shall apply unless responsibility for the~~
5 ~~payment is otherwise provided by law or unless the deposition~~
6 ~~officer or entity is notified in writing at the time the services or~~
7 ~~products are requested that the party or another identified person~~
8 ~~will be responsible for payment.~~

9 ~~(3) This subdivision does not prohibit or supersede an agreement~~
10 ~~between an attorney and a party allocating responsibility for the~~
11 ~~payment of deposition costs to the party.~~

12 ~~(4) The requesting attorney or party appearing in propria~~
13 ~~persona, upon the written request of a deposition officer who has~~
14 ~~obtained a final judgment for payment of services provided~~
15 ~~pursuant to this subdivision, shall provide to the deposition officer~~
16 ~~an address that can be used to effectuate service for the purpose~~
17 ~~of Section 708.110 in the manner specified in Section 415.10.~~

18 ~~(i) For purposes of this section, "deposition product or service"~~
19 ~~means any product or service provided in connection with a~~
20 ~~deposition that qualifies as shorthand reporting, as described in~~
21 ~~Section 8017 of the Business and Professions Code, and any~~
22 ~~product or service derived from that shorthand reporting.~~

23 ~~(j) For purposes of this section, "certified shorthand reporter"~~
24 ~~has the same meaning as Section 8018 of the Business and~~
25 ~~Professions Code.~~

26 ~~SEC. 4. Section 69957 of the Government Code is amended~~
27 ~~to read:~~

28 ~~69957. (a) If an official reporter or an official reporter pro~~
29 ~~tempore is unavailable to report an action or proceeding in a court,~~
30 ~~subject to the availability of approved equipment and equipment~~
31 ~~monitors, the court may order that, in a limited civil case, or a~~
32 ~~misdemeanor or infraction case, the action or proceeding be~~
33 ~~electronically recorded, including all the testimony, the objections~~
34 ~~made, the ruling of the court, the exceptions taken, all arraignments,~~
35 ~~pleas, and sentences of defendants in criminal cases, the arguments~~
36 ~~of the attorneys to the jury, and all statements and remarks made~~
37 ~~and oral instructions given by the judge. A transcript derived from~~
38 ~~an electronic recording transcribed by a certified shorthand reporter~~
39 ~~may be utilized whenever a transcript of court proceedings is~~
40 ~~required. Transcripts derived from electronic recordings shall~~

1 include a designation of “inaudible” or “unintelligible” for those
2 portions of the recording that contain no audible sound or are not
3 discernible. The electronic recording device and appurtenant
4 equipment shall be of a type approved by the Judicial Council for
5 courtroom use and shall only be purchased for use as provided by
6 this section. A court shall not expend funds for or use electronic
7 recording technology or equipment to make an unofficial record
8 of an action or proceeding, including for purposes of judicial
9 notetaking, or to make the official record of an action or proceeding
10 in circumstances not authorized by this section.

11 (b) Notwithstanding subdivision (a), a court may use electronic
12 recording equipment for the internal personnel purpose of
13 monitoring the performance of subordinate judicial officers, as
14 defined in Section 71601 of the Government Code, hearing officers,
15 and temporary judges while proceedings are conducted in the
16 courtroom, if notice is provided to the subordinate judicial officer,
17 hearing officer, or temporary judge, and to the litigants, that the
18 proceeding may be recorded for that purpose. An electronic
19 recording made for the purpose of monitoring that performance
20 shall not be used for any other purpose and shall not be made
21 publicly available. Any recording made pursuant to this subdivision
22 shall be destroyed two years after the date of the proceeding unless
23 a personnel matter is pending relating to performance of the
24 subordinate judicial officer, hearing officer, or temporary judge.

25 (c) Prior to purchasing or leasing any electronic recording
26 technology or equipment, a court shall obtain advance approval
27 from the Judicial Council, which may grant that approval only if
28 the use of the technology or equipment will be consistent with this
29 section.

30 (d) For purposes of this section, “certified shorthand reporter”
31 has the same meaning as Section 8018 of the Business and
32 Professions Code.